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8 And GUSTAVO GUTIERREZ

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**
12

13 LUIS RODRIGUEZ,
14
15 Plaintiff,
16 vs.

17 FRESNO POLICE OFFICER REY
MEDELES; FRESNO POLICE OFFICER
18 GUSTAVO GUTIERREZ; UNKNOWN
LOCAL AND FEDERAL LAW
19 ENFORCEMENT OFFICERS; THE CITY OF
FRESNO,

20 Defendants.
21
22
23

Case No. 1:23-cv-01471-JLT-SKO

*[Assigned for All Purposes to:
Hon. Jennifer L. Thurston]*

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT FOR
DAMAGES; JURY TRIAL DEMANDED**

Complaint Filed: October 14, 2023
Trial Date: None Set

24 Defendants CITY OF FRESNO, REY MEDELES, and GUSTAVO GUTIERREZ
25 ("Defendants") hereby answer Plaintiff LUIS RODRIGUEZ's Complaint for Damages (Dkt. 1; filed
26 October 14, 2023, hereinafter referred to as the "Complaint") and Defendants hereby admit, deny,
27 and allege as follows:
28

ANSWER TO COMPLAINT

1
2 1. Answering paragraph 1 of the Complaint, under the header “JURISDICTION AND
3 VENUE”: Defendants admit that this Court has jurisdiction. As to the remaining allegations in this
4 paragraph, at present, Defendants do not have sufficient knowledge, or information or belief, to
5 enable Defendants to answer the allegations contained within such paragraph, as stated, and on those
6 grounds deny generally and specifically each and every allegation contained therein – and
7 Defendants deny all liability and/or wrongdoing.

8 2. Answering paragraph 2 of the Complaint, under the header “JURISDICTION AND
9 VENUE”: Defendants admit that venue is proper in this Court. As to the remaining allegations in
10 this paragraph, at present, Defendants do not have sufficient knowledge, or information or belief, to
11 enable Defendants to answer the allegations contained within such paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein – and
13 Defendants deny all liability and/or wrongdoing.

14 3. Answering paragraph 3 of the Complaint, under the header “PARTIES”: Defendants do not
15 have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations
16 contained within such paragraph, as stated, and on those grounds deny generally and specifically
17 each and every allegation contained therein.

18 4. Answering paragraph 4 of the Complaint, under the header “PARTIES”: Defendants do not
19 have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations
20 contained within such paragraph, as stated, and on those grounds deny generally and specifically
21 each and every allegation contained therein.

22 5. Answering paragraph 5 of the Complaint, under the header “PARTIES”: Defendants do not
23 have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations
24 contained within such paragraph, as stated, and on those grounds deny generally and specifically
25 each and every allegation contained therein.

26 6. Answering paragraph 6 of the Complaint, under the header “PARTIES”: Defendants do not
27 have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations
28

1 contained within such paragraph, as stated, and on those grounds deny generally and specifically
2 each and every allegation contained therein.

3 7. Answering paragraph 7 of the Complaint, under the header “PARTIES”: Defendants admit
4 that Defendant City is a government entity. As to the remaining allegations in this paragraph, at
5 present, defendants do not have sufficient knowledge, or information or belief, to enable defendants
6 to answer the allegations contained within such paragraph, as stated, and on those grounds deny
7 generally and specifically each and every of the allegations contained therein – and Defendants deny
8 all liability and/or wrongdoing.

9 8. Answering paragraph 8 of the Complaint, under the header “FACTUAL ALLEGATIONS”:
10 Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to
11 answer the allegations contained within such paragraph, as stated, and on those grounds deny
12 generally and specifically each and every allegation contained therein.

13 9. Answering paragraph 9 of the Complaint, under the header “FACTUAL ALLEGATIONS”:
14 Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to
15 answer the allegations contained within such paragraph, as stated, and on those grounds deny
16 generally and specifically each and every allegation contained therein.

17 10. Answering paragraph 10 of the Complaint, under the header “FACTUAL
18 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
19 Defendants to answer the allegations contained within such paragraph, as stated, and on those
20 grounds deny generally and specifically each and every allegation contained therein.

21 11. Answering paragraph 11 of the Complaint, under the header “FACTUAL
22 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
23 Defendants to answer the allegations contained within such paragraph, as stated, and on those
24 grounds deny generally and specifically each and every allegation contained therein.

25 12. Answering paragraph 12 of the Complaint, under the header “FACTUAL
26 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
27 Defendants to answer the allegations contained within such paragraph, as stated, and on those
28 grounds deny generally and specifically each and every allegation contained therein.

1 13. Answering paragraph 13 of the Complaint, under the header “FACTUAL
2 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
3 Defendants to answer the allegations contained within such paragraph, as stated, and on those
4 grounds deny generally and specifically each and every allegation contained therein.

5 14. Answering paragraph 14 of the Complaint, under the header “FACTUAL
6 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
7 Defendants to answer the allegations contained within such paragraph, as stated, and on those
8 grounds deny generally and specifically each and every allegation contained therein.

9 15. Answering paragraph 15 of the Complaint, under the header “FACTUAL
10 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
11 Defendants to answer the allegations contained within such paragraph, as stated, and on those
12 grounds deny generally and specifically each and every allegation contained therein.

13 16. Answering paragraph 16 of the Complaint, under the header “FACTUAL
14 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
15 Defendants to answer the allegations contained within such paragraph, as stated, and on those
16 grounds deny generally and specifically each and every allegation contained therein.

17 17. Answering paragraph 17 of the Complaint, under the header “FACTUAL
18 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
19 Defendants to answer the allegations contained within such paragraph, as stated, and on those
20 grounds deny generally and specifically each and every allegation contained therein.

21 18. Answering paragraph 18 of the Complaint, under the header “FACTUAL
22 ALLEGATIONS”: Defendants do not have sufficient knowledge, or information or belief, to enable
23 Defendants to answer the allegations contained within such paragraph, as stated, and on those
24 grounds deny generally and specifically each and every allegation contained therein.

25 19. Answering paragraph 19 of the Complaint, under the header “CAUSES OF ACTION:
26 FIRST CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions and
27 denials contained in the foregoing Answer which are set forth to each and every allegation contained
28 in paragraphs 1 through 18, inclusive, of the Complaint.

20. Answering paragraph 20 of the Complaint, under the header “CAUSES OF ACTION: FIRST CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

21. Answering paragraph 21 of the Complaint, under the header “CAUSES OF ACTION: FIRST CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

22. Answering paragraph 22 of the Complaint, under the header “CAUSES OF ACTION: FIRST CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

23. Answering paragraph 23 of the Complaint, under the header “CAUSES OF ACTION: SECOND CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions and denials contained in the foregoing Answer which are set forth to each and every allegation contained in paragraphs 1 through 22, inclusive, of the Complaint.

24. Answering paragraph 24 of the Complaint, under the header “CAUSES OF ACTION: SECOND CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

25. Answering paragraph 25 of the Complaint, under the header “CAUSES OF ACTION: SECOND CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

26. Answering paragraph 26 of the Complaint, under the header “CAUSES OF ACTION: SECOND CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or belief, to enable Defendants to answer the allegations contained within such paragraph, as stated, and on those grounds deny generally and specifically each and every allegation contained therein.

1 27. Answering paragraph 27 of the Complaint, under the header “CAUSES OF ACTION:
2 THIRD CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions and
3 denials contained in the foregoing Answer which are set forth to each and every allegation contained
4 in paragraphs 1 through 26, inclusive, of the Complaint.

5 28. Answering paragraph 28 of the Complaint, under the header “CAUSES OF ACTION:
6 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
7 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
8 and on those grounds deny generally and specifically each and every allegation contained therein.

9 29. Answering paragraph 29 of the Complaint, under the header “CAUSES OF ACTION:
10 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
11 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
12 and on those grounds deny generally and specifically each and every allegation contained therein.

13 30. Answering paragraph 30 of the Complaint, under the header “CAUSES OF ACTION:
14 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
15 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
16 and on those grounds deny generally and specifically each and every allegation contained therein.

17 31. Answering paragraph 31 of the Complaint, under the header “CAUSES OF ACTION:
18 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
19 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
20 and on those grounds deny generally and specifically each and every allegation contained therein.

21 32. Answering paragraph 32 of the Complaint, under the header “CAUSES OF ACTION:
22 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
23 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
24 and on those grounds deny generally and specifically each and every allegation contained therein.

25 33. Answering paragraph 33 of the Complaint, under the header “CAUSES OF ACTION:
26 THIRD CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
27 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
28 and on those grounds deny generally and specifically each and every allegation contained therein.

1 34. Answering paragraph 34 of the Complaint, under the header “CAUSES OF ACTION:
2 FOURTH CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions
3 and denials contained in the foregoing Answer which are set forth to each and every allegation
4 contained in paragraphs 1 through 33, inclusive, of the Complaint.

5 35. Answering paragraph 35 of the Complaint, under the header “CAUSES OF ACTION:
6 FOURTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
7 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
8 and on those grounds deny generally and specifically each and every allegation contained therein.

9 36. Answering paragraph 36 of the Complaint, under the header “CAUSES OF ACTION:
10 FOURTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
11 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
12 and on those grounds deny generally and specifically each and every allegation contained therein.

13 37. Answering paragraph 37 of the Complaint, under the header “CAUSES OF ACTION:
14 FOURTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
15 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
16 and on those grounds deny generally and specifically each and every allegation contained therein.

17 38. Answering paragraph 38 of the Complaint, under the header “CAUSES OF ACTION:
18 FOURTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
19 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
20 and on those grounds deny generally and specifically each and every allegation contained therein.

21 39. Answering paragraph 39 of the Complaint, under the header “CAUSES OF ACTION:
22 FOURTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
23 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
24 and on those grounds deny generally and specifically each and every allegation contained therein.

25 40. Answering paragraph 40 of the Complaint, under the header “CAUSES OF ACTION:
26 FIFTH CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions and
27 denials contained in the foregoing Answer which are set forth to each and every allegation contained
28 in paragraphs 1 through 39, inclusive, of the Complaint.

1 41. Answering paragraph 41 of the Complaint, under the header “CAUSES OF ACTION:
2 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
3 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
4 and on those grounds deny generally and specifically each and every allegation contained therein.

5 42. Answering paragraph 42 of the Complaint, under the header “CAUSES OF ACTION:
6 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
7 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
8 and on those grounds deny generally and specifically each and every allegation contained therein.

9 43. Answering paragraph 43 of the Complaint, under the header “CAUSES OF ACTION:
10 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
11 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
12 and on those grounds deny generally and specifically each and every allegation contained therein.

13 44. Answering paragraph 44 of the Complaint, under the header “CAUSES OF ACTION:
14 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
15 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
16 and on those grounds deny generally and specifically each and every allegation contained therein.

17 45. Answering paragraph 45 of the Complaint, under the header “CAUSES OF ACTION:
18 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
19 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
20 and on those grounds deny generally and specifically each and every allegation contained therein.

21 46. Answering paragraph 46 of the Complaint, under the header “CAUSES OF ACTION:
22 FIFTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
23 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
24 and on those grounds deny generally and specifically each and every allegation contained therein.

25 47. Answering paragraph 47 of the Complaint, under the header “CAUSES OF ACTION:
26 SIXTH CAUSE OF ACTION”: Defendants repeat, reiterate, and re-allege all of the admissions and
27 denials contained in the foregoing Answer which are set forth to each and every allegation contained
28 in paragraphs 1 through 46, inclusive, of the Complaint.

1 48. Answering paragraph 48 of the Complaint, under the header “CAUSES OF ACTION:
2 SIXTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
3 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
4 and on those grounds deny generally and specifically each and every allegation contained therein.

5 49. Answering paragraph 49 of the Complaint, under the header “CAUSES OF ACTION:
6 SIXTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
7 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
8 and on those grounds deny generally and specifically each and every allegation contained therein.

9 50. Answering paragraph 50 of the Complaint, under the header “CAUSES OF ACTION:
10 SIXTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
11 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
12 and on those grounds deny generally and specifically each and every allegation contained therein.

13 51. Answering paragraph 51 of the Complaint, under the header “CAUSES OF ACTION:
14 SIXTH CAUSE OF ACTION”: Defendants do not have sufficient knowledge, or information or
15 belief, to enable Defendants to answer the allegations contained within such paragraph, as stated,
16 and on those grounds deny generally and specifically each and every allegation contained therein.

17 52. Answering Plaintiffs’ Prayer for relief, Defendants deny all liability to Plaintiff, including,
18 but not limited to, all liability for any and all damages, including, but not limited to, compensatory
19 damages; statutory damages; attorneys’ fees; costs of any kind; punitive and exemplary damages
20 against Defendants; and/or for any relief of any kind from Defendants to Plaintiff.

21 **AFFIRMATIVE DEFENSES**

22 1. As separate and affirmative defenses, Defendant alleges as follows:

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(Failure to State Claim, Statute of Limitations)**

25 2. Plaintiff’s Complaint fails to state a claim upon which relief can be granted.

26 3. Plaintiff’s Complaint also fails to state a claim against any defendant in this action.

27 4. Plaintiff’s claims are time-barred by the operative statutes of limitations (including,
28 but not limited to, Cal. Code Civ. Proc. § 335.1).

SECOND AFFIRMATIVE DEFENSE

(Tort Claims Act Violation)

5. This action is barred by the Plaintiff's failure to comply with the government tort claims presentation requirements, California Government Code § 900, *et seq.*, including but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2, 911.4, 945.4, 945.6, 946.6, 950.2, and 950.6, to the extent applicable.

6. The Complaint is barred based on Plaintiff's failure to exhaust administrative remedies prior to filing this lawsuit.

THIRD AFFIRMATIVE DEFENSE

(Waiver, Estoppel, Unclean Hands)

7. Defendant alleges that Plaintiff's action is barred by reason of conduct, actions, and inactions of Plaintiff which amount to and constitute a waiver of any right Plaintiffs may or might have had in reference to the matters and things alleged in the Complaint, or that otherwise estop Plaintiffs from recovery in this action, including, but not limited to, the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

8. Plaintiff's claims are barred or limited to the extent Plaintiff failed to mitigate Plaintiffs' injuries or damages, if there were any. Plaintiff failed to mitigate the damages, if any, which Plaintiff have sustained, and to exercise reasonable care to avoid the consequences of harms, if any, in that, among other things, Plaintiff failed to use reasonable diligence in caring for any injuries, failed to use reasonable means to prevent aggravation of any injuries, and failed to take reasonable precautions to reduce any injuries and damages.

FIFTH AFFIRMATIVE DEFENSE

(Contributory and/or Comparative Liability)

9. Plaintiff's claims are barred or limited by Plaintiff's contributory/comparative negligence or other conduct, acts, or omissions, and to the extent any Plaintiff suffered any injury or damages, it was the result of Plaintiffs' own negligent or deliberate actions or omissions.

1 10. Plaintiff's recovery is barred because any injury or damage suffered by Plaintiff was
2 caused solely by reason of the Plaintiff's wrongful acts and conduct and the willful resistance to a
3 peace officer in the discharge their duties. The conduct set forth in the Complaint, if and to the
4 extent it occurred, was privileged and justified and done with a good faith belief that it was correct
5 and no action may be taken against the answering Defendant on account of such conduct.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 **(Public Entity/Employee Immunity for Others' Torts)**

8 11. Plaintiff's recovery is barred because public entities and employees are immune from
9 liability for any injury caused by the act or omission of another person. Cal. Gov. Code §§ 815 *et*
10 *seq.*, 820.2 *et seq.*

11 12. The answering Defendants are informed and believes and thereon alleges that if
12 Plaintiff sustained any injury or damages, such injury or damages were solely caused or contributed
13 to by the wrongful conduct of other entities or persons other than the answering Defendants. To the
14 extent that Plaintiff's damages were so caused, any recovery by Plaintiff as against the answering
15 defendant should be subject to proportionately comparative equitable indemnity/contribution from
16 such third parties.

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 **(Public Entity/Employee Immunity for Discretionary Acts)**

19 13. There is no liability for any injury or damages, if there were any, resulting from an
20 exercise of discretion vested in a public employee, whether or not such discretion was abused. Cal.
21 Gov. Code § 815.2, 820.2, 820.4, 820.8, 820 *et seq.*

22 14. Plaintiff's recovery is barred because public entities and employees are immune from
23 liability for discharging their mandatory duties with reasonable diligence.

24 15. A public employee may not be held liable for injuries or damages, if any, caused by
25 failure to adopt or by adoption of an enactment or by failure to enforce an enactment and/or law, for
26 an injury caused by their issuance, denial, suspension or revocation or by their failure or refusal to
27 issue, denies, suspend or revoke, any permit, license, certificate, approval, order, or similar
28 authorization, where they are authorized by enactment to determine whether or not such

1 authorization should be issued, denied, suspended or revoked, pursuant to Cal. Gov. Code §§ 818.2,
 2 818.4, 818.8, 821, and 821.2. Based thereon, answering Defendant is immune from liability for any
 3 injuries claimed by Plaintiffs, herein.

4 16. The answering Defendants re immune for any detriment resulting from any of its
 5 actions or omissions at the time of the incident of which Plaintiffs complain pursuant to Cal. Gov.
 6 Code §§ 810 *et seq.*, 815 *et seq.*, 820 *et seq.*, and 845 *et seq.*, including, but not limited to, Cal. Gov.
 7 Code §§ 810, 810.2, 810.4, 810.6, 810.8, 811, 811.2, 811.4, 811.6, 811.8, 820.6, 820.8, 821, 821.2,
 8 821.4, 821.6, 821.8, 822.2, 830.5, 830.6, 835.4, 844.6, and Cal. Gov. Code §§ 854, *et seq.*, including,
 9 but not limited to, §§ 845.6, 854.6, 854.8(a)(2), and §§ 855.4, 855.6, 855.8 and 856.4.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 **(Public Entity Immunity)**

12 17. To the extent that the Complaint attempts to predicate liability upon the answering
 13 public entity Defendant or any employees thereof for purported negligence in retention, hiring,
 14 employment, training, or supervision of any public employee, such liability is barred by Cal. Gov.
 15 Code §§ 815.2 and 820.2 and *Herndon v. Cnty. of Marin*, 25 Cal. App. 3d 933, 935, 936 (1972),
 16 *rev'd on other grounds by Sullivan v. County of Los Angeles*, 12 Cal.3d 710 (1974); and by the lack
 17 of any duty running to any Plaintiffs; by the fact that any such purported act or omission is governed
 18 exclusively by statute and is outside the purview of any public employees' authority; and by the
 19 failure of any such acts or omissions to be the proximate or legal cause of any injury alleged in the
 20 Complaint. *See de Villers v. Cnty. of San Diego*, 156 Cal.App.4th 238, 251-253, 255-256 (2007).

21 18. This Defendants may not be held liable on a *respondeat superior* theory for any
 22 negligent or wrongful act or omission on the part of any subordinate. Cal. Gov. Code §§ 844.6,
 23 845.6; Cal. Civ. Code § 2351; *Malloy v. Fong*, 37 Cal.2d 356, 378-379(1951); *Monell v. Dep't of*
 24 *Soc. Servs.*, 436 U.S. 658 (1978); *Larez v. City of Los Angeles*, 946 F.2d 630, 645-646 (9th Cir.
 25 1991); *cf. City of Canton v. Harris*, 489 U.S. 378, 388-389 (1989); *City of Los Angeles v. Heller*,
 26 475 U.S. 796 (1986).

NINTH AFFIRMATIVE DEFENSE

(Qualified Immunity & Good Faith Immunity)

19. Defendants and their agents or officers at all times relevant to this action acted reasonably and prudently under the circumstances. Defendants therefore assert any individual defendants' (that may be named by Plaintiffs) Qualified Immunity from liability to the fullest extent applicable.

20. Defendants are immune from liability under the Federal Civil Rights Act because they acted in good faith with an honest and reasonable belief that their actions were necessary and appropriate. Defendants are immune from liability under the Federal Civil Rights Act because a reasonable police officer could believe that their acts and conduct were appropriate. Defendants are immune from liability under the Federal Civil Rights Act because their conduct did not violate clearly established rights. Defendants are also immune from liability under the doctrine of Qualified Immunity.

21. At all relevant times, Defendants and their agents or officers acted within the scope of discretion, with due care, and good faith fulfillment of responsibilities pursuant to applicable statutes, rules and regulation, within the bounds of reason, and with the good faith belief that their actions comported with all applicable federal and state laws. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) ; Cal Gov. Code §§ 815.2, 820.2.

TENTH AFFIRMATIVE DEFENSE

(Assumption of Risk)

22. At the time and place referred to in the Complaint, and before such event, Plaintiff knew, appreciated, and understood each and every risk involved in placing themselves in the position which Plaintiff then assumed, and willingly, knowingly, and voluntarily assumed each of such risk, including, but not limited to, the risk of suffering personal bodily injury, lawful deprivation of rights, and/or death.

JURY DEMAND

23. Defendants demand a trial by jury as to each issue triable by jury.

PRAYER FOR RELIEF

WHEREFORE, the answering Defendants pray as follows:

1. That the Complaint be dismissed, with prejudice, and in its entirety;

2. That Plaintiff takes nothing by reason of this Complaint and that judgment be entered against Plaintiff and in favor of Defendants;

3. That Defendants be awarded attorneys' fees and costs of this suit and costs of proof;
and

4. That Defendants be awarded such other relief as the Court deems just.

DATED: February 1, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Tony M. Sain

TONY M. SAIN

TORI L.N. BAKKEN

Attorneys for Defendants,
CITY OF FRESNO, et al.

FEDERAL COURT PROOF OF SERVICE

City of Fresno

Case No. 1:23-cv-01471-JLT-SKO

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On February 1, 2024, I served the following document(s): DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES; JURY TRIAL DEMANDED

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Keving G. Little, SBN 149818
LAW OFFICE OF KEVIN G. LITTLE
P.O. Box 8656
Fresno, California 93747
Tel: 559-342-5800
Fax: 559-242-2400
Email: kevin@kevinglittle.com

Attorney for Plaintiff Luis F. Rodriquez

The documents were served by the following means:

☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on February 1, 2024, at Los Angeles, California.

/ s / *Curfew F. Wilson*

Curfew F. Wilson